

## 46 Am. Jur. 2d Judges § 212

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### Judges

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### IX. Disqualification to Act in Particular Case

#### E. Effect of Disqualification

## § 212. Validity of formal and ministerial orders and acts after disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  56

The disqualification of a judge to hear and decide a case generally affects the judge's authority to act only in regard to discretionary matters in the case.<sup>1</sup> The judge is not prevented from making orders that are purely formal and ministerial<sup>2</sup> such as signing an order appointing a visiting judge to try the case,<sup>3</sup> statutorily transferring a case to the proper court,<sup>4</sup> drawing an emergency panel of jurors for the term and setting the date for them to report<sup>5</sup> certifying to a transcript of a judgment rendered by the judge's predecessor,<sup>6</sup> reducing to writing an oral ruling,<sup>7</sup> arranging the calendar or regulating the order of business,<sup>8</sup> and making such formal orders as are necessary to the progress of the cause.<sup>9</sup>

A chief judge of a judicial circuit, after self-recusing in a case, had authority to poll other judges in the circuit to ascertain whether any other judge could sit on the case, as this was purely ministerial in nature and resulted in no substantive rulings in the case.<sup>10</sup> Also, any error in a judge's setting a hearing in a custody proceeding after a recusal was promptly corrected by the proper special judge and there was nothing to suggest that the order was anything but a ministerial error.<sup>11</sup>

The disqualified judge may also carry out provisions of a remand order.<sup>12</sup>

Actions of a judge which go beyond ministerial acts include entering a contempt conviction and sentence against a party, as this affects the substantive rights of the party;<sup>13</sup> entering a proposed order following a hearing, where the order set forth findings and conclusions that were not made at the hearing and the transcript was unclear;<sup>14</sup> and entering an order approving a settlement and distribution of an estate.<sup>15</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Assigned judge lost all authority to decide substantive matters upon recusing himself, including whether he should have recused himself after all, and thus, judge could not rescind his recusal and issue judgment in dissolution proceeding; although there was no record of recusal in the record, wife's attorney made statements during hearing that implied that he agreed that judge announced that he was recusing himself because his nephew was an attorney at the same law firm as wife's attorney's, when the judge announced his recusal, wife's attorney asked him to reconsider, and several days later, the judge announced that he had consulted with the chief judge and decided to rescind his recusal, and judge did not obtain remittal for reinstatement from parties. Ill. Sup. Ct. R. 63; 735 Ill. Comp. Stat. Ann. 5/2-1001(a)(3)(iii). *In re Marriage of Peradotti*, 2018 IL App (2d) 180247, 427 Ill. Dec. 305, 117 N.E.3d 1242 (App. Ct. 2d Dist. 2018).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 Dotson v. Burchett, 301 Ky. 28, 190 S.W.2d 697, 162 A.L.R. 636 (1945).
- 2 Menifee County Bd. of Ed. v. Fiscal Court of Menifee County, 329 S.W.2d 46 (Ky. 1959).
- 3 In re Gonzalez, 115 S.W.3d 36 (Tex. App. San Antonio 2003).
- 4 Natl. Church Residences of Worthington v. Timson, 78 Ohio App. 3d 798, 605 N.E.2d 1346 (10th Dist. Franklin County 1992).
- 5 State v. Compton, 1953-NMSC-036, 57 N.M. 227, 257 P.2d 915 (1953).
- 6 Hass v. Leverton, 128 Iowa 79, 102 N.W. 811 (1905).
- 7 Fernwoods Condominium Ass'n #2, Inc. v. Alonso, 26 So. 3d 27 (Fla. 3d DCA 2009).
- 8 In re Woodside-Florence Irr. Dist., 121 Mont. 346, 194 P.2d 241 (1948).
- 9 Dotson v. Burchett, 301 Ky. 28, 190 S.W.2d 697, 162 A.L.R. 636 (1945).
- 10 Parker v. State, 873 So. 2d 270 (Fla. 2004).
- 11 Lasater v. Lasater, 809 N.E.2d 380 (Ind. Ct. App. 2004).
- 12 Stahl v. Board of Sup'rs of Ringgold County, 187 Iowa 1342, 175 N.W. 772, 11 A.L.R. 185 (1920).
- 13 State ex rel. Stern v. Mascio, 81 Ohio St. 3d 297, 1998-Ohio-622, 691 N.E.2d 253 (1998).
- 14 Fuchs v. Fuchs, 840 So. 2d 449 (Fla. 4th DCA 2003).
- 15 Matter of Estate of Risovi, 429 N.W.2d 404 (N.D. 1988).

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